

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)	
PARTNERS, COUNTRY MUSIC)	
TELEVISION, INC., PARAMOUNT)	
PICTURES CORPORATION, and BLACK)	
ENTERTAINMENT TELEVISION, LLC,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 07-CV-2203
)	
YOUTUBE, INC., YOUTUBE, LLC,)	
and GOOGLE, INC.,)	
)	
Defendants.)	
)	
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)	
THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, BOURNE CO., et al.,)	
on behalf of themselves and all)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 07-CV-3582
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)	
Defendants.)	
)	
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VIDEOTAPED DEPOSITION OF HEATHER GILLETTE

SAN FRANCISCO, CALIFORNIA

TUESDAY, AUGUST 12, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR

CSR LICENSE NO. 9830

JOB NO. 15481

1 GILLETTE

2
3 AUGUST 12, 2008

4 9:14 a.m.

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6
7 VIDEOTAPED DEPOSITION OF HEATHER GILLETTE,
8 held at the offices of SHEARMAN & STERLING,
9 525 Market Street, San Francisco, California,
10 pursuant to notice, before ANDREA M. IGNACIO
11 HOWARD, CLR, RPR, CSR License No. 9830.
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GILLETTE

A P P E A R A N C E S :

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

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GILLETTE

A P P E A R A N C E S: (Continued.)

ALSO PRESENT:

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STUART PETTIGREW, Videographer.

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GILLETTE

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2 10:12:32 Q Okay. Some other basic ground rules that
3 10:12:36 lawyers typically say for witnesses who haven't been
4 10:12:38 deposed before which might be useful, there's a
5 10:12:42 natural inclination to nod or shake your head rather
6 10:12:46 than vocalize a "yes" or "no" answer. But for the
7 10:12:47 court reporter to pick up -- pick up the answer and
8 10:12:50 record on the transcript, you actually have to say
9 10:12:52 "yes" or "no"; is that okay?

10 10:12:54 A I understand, yes.

11 10:12:55 Q Okay. Great.

12 10:12:58 Are you currently employed?

13 10:13:00 A Yes, I am.

14 10:13:00 Q Where at?

15 10:13:01 A At YouTube, Incorporated/Google,
16 10:13:04 Incorporated.

17 10:13:04 Q And what is your title there?

18 10:13:07 A Manager of YouTube User Ops.

19 10:13:15 Q And how long have you been employed at
20 10:13:18 YouTube?

21 10:13:19 A Since November 15th of 2005.

22 10:13:22 Q And at the time that you started at YouTube
23 10:13:28 in November 2005, was your title manager of YouTube
24 10:13:33 User Ops?

25 10:13:34 A No, it was not.

1 GILLETTE

2 10:13:35 Q And what was your title at that time?

3 10:13:37 A Office manager.

4 10:13:39 Q And there came a time when that changed.

5 10:13:42 When did it change? When did your title change from
6 10:13:43 office manager?

7 10:13:47 A I don't recall the exact date. I could
8 10:13:53 estimate for you.

9 10:13:54 Q Okay. Could you do that, please?

10 10:13:56 A I believe three to four months after that.
11 10:14:00 Maybe shorter.

12 10:14:01 Q And what -- what did your title -- title
13 10:14:05 change to at that point?

14 10:14:07 A Director of customer support.

15 10:14:09 Q Was that a promotion?

16 10:14:19 A Yeah. I mean it -- yes.

17 10:14:21 Q And then I suppose your title changed again
18 10:14:26 at some point.

19 10:14:27 How long were you the director of customer
20 10:14:30 support?

21 10:14:31 A Until the Google acquisition.

22 10:14:32 Q And when was that, approximately?

23 10:14:37 A I actually believe it was middle of
24 10:14:46 November 2006; is that correct? I believe that's
25 10:14:49 correct. I may be wrong.

GILLETTE

10:14:51 Q Okay. And at the time of the Google

10:14:56 acquisition, what -- what did your title change to?

10:14:59 A It became manager of, at that time, Con Ops.

10:15:07 YouTube Con Ops. Excuse me.

10:15:11 Q Is that Con like C-O-N?

10:15:13 A Correct. C-O-N, O-P-S.

10:15:15 Q Okay. I suppose your title changed one more

10:15:22 time at least, and when -- when did your title change

10:15:24 from manager of YouTube Con Ops?

10:15:31 A Again, I'm not sure and, you know, I could --

10:15:40 I could give a guess in this instance, but I'm really

10:15:43 not sure.

10:15:43 Q Roughly, what is your best sense?

10:15:49 A Probably seven or eight months, maybe. After

10:15:53 that, the -- we -- our department moved from Con Ops

10:15:58 to the greater OSO organization.

10:16:06 Q Okay. And at that time, what did your title

10:16:08 change to?

10:16:09 A Manager of YouTube OSO.

10:16:11 Q Okay. Now, going back in time to when you

10:16:20 first started at YouTube and your title was office

10:16:23 manager, what were your job responsibilities in that

10:16:25 role?

10:16:27 A I can list many of the duties I had. It may

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2 11:02:45 you did ask me this before, that I also headed up what
3 11:02:48 we called the Live Site Team, which was the team that
4 11:02:53 reviewed the videos that had been flagged by our
5 11:02:56 communities as being potentially inappropriate.

6 11:03:10 Q Okay. Now, back when you -- when you first
7 11:03:13 joined YouTube, did YouTube monitor all the videos on
8 11:03:18 its site for copyright violations?

9 11:03:21 MR. SHAPIRO: Objection; vague; ambiguous.

10 11:03:23 You may answer.

11 11:03:25 THE WITNESS: No.

12 11:03:25 MR. BROWNE: Q. It did not?

13 11:03:27 A I'm not quite clear on your question, but if
14 11:03:30 I'm understanding it correctly, no, but maybe you
15 11:03:33 could clarify your question.

16 11:03:34 Q Okay. Well, was there a time when YouTube
17 11:03:36 told -- well, are you familiar with an FAQ page on the
18 11:03:41 YouTube website?

19 11:03:44 A I don't know if that's what we called it, but
20 11:03:46 we had FAQ help for sure, yes.

21 11:03:48 Q Okay. At the time that you first joined
22 11:03:50 YouTube, you had FAQ help, just to be clear?

23 11:03:52 A I believe we did. I could be wrong, right.
24 11:04:02 We could have added that very soon after I joined.
25 11:04:05 Again, I wasn't doing user support when I joined.

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2 11:09:59 recall -- I don't even recall really what the wording

3 11:10:04 I had issue with was.

4 11:10:05 Q Well, were you in a position to know at that

5 11:10:12 time whether a statement like that was accurate?

6 11:10:14 MR. SHAPIRO: Objection; foundation.

7 11:10:20 You may answer.

8 11:10:21 THE WITNESS: Again, if -- because it is -- I

9 11:10:26 remember my concern with that was with regard to

10 11:10:29 copyright. The only thing that I could know for sure

11 11:10:33 that I was accurate about was the operational portion

12 11:10:36 of this, and I -- I know at that time we were not

13 11:10:40 reviewing everything for that reason.

14 11:10:46 MR. BROWNE: Q. For what reason?

15 11:10:47 A For copyright.

16 11:10:49 Q Was there any time when you were reviewing

17 11:10:56 everything for copyright?

18 11:10:57 A Everything, no. As far as I know, no, while

19 11:10:59 I was there.

20 11:11:04 Q Were there times where -- where you were

21 11:11:06 reviewing some things for copyright?

22 11:11:08 A Yes.

23 11:11:08 Q What times were those?

24 11:11:17 A At various stages pre-acquisition, I believe,

25 11:11:36 yes. I'm -- I'm fairly sure that pre-acquisition we

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2 11:11:42 did do -- we did scan portions of the site to try and
3 11:11:48 locate what we thought might be unauthorized content.

4 11:11:52 Q Who did that?

5 11:12:00 A That changed over time. The people that were
6 11:12:03 involved definitely changed over time.

7 11:12:10 Q What people were involved at any point in
8 11:12:18 time?

9 11:12:20 A So I can -- I can start from the point where
10 11:12:23 I joined the company. At that very early stage, I can
11 11:12:33 recall a few people helping, and there may have
12 11:12:35 definitely been more. Again, it was a small company,
13 11:12:38 so everyone helped with a little bit of everything,
14 11:12:40 but I helped. Brent Hurley helped.

15 11:12:56 I -- I think -- you know, I definitely know
16 11:13:09 that there were more people helping, but I think we
17 11:13:11 were the key players.

18 11:13:12 Q And how did you -- how did you scan the site
19 11:13:20 to try to locate unauthorized conduct -- content?

20 11:13:26 A I -- I believe at that time, again, very
21 11:13:30 early stage, we were really -- the content that
22 11:13:35 appeared to be most popular and shared at that stage
23 11:13:40 that we suspected could be unauthorized was really
24 11:13:43 just South Park.

25 11:13:47 Q So again though how did you scan the site to

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2 11:13:50 find that content?

3 11:13:52 A I'm sorry. A lot of it was if we happened to

4 11:13:58 come across it, of course, and I believe there --

5 11:14:07 there was key word searching to try to locate that

6 11:14:13 content, and if -- if in the early stages there were

7 11:14:22 other methods, I'm not aware. That's my firsthand

8 11:14:26 knowledge.

9 11:14:27 Q Were there other methods at later stages?

10 11:14:33 A For South Park specifically, I don't think

11 11:14:36 so. Again, I could be wrong. Things did change. Our

12 11:14:42 approach and our attempt at trying to help with --

13 11:14:45 with unauthorized content changed over time

14 11:14:49 definitely. So as it pertains to South Park, I don't

15 11:14:57 think so.

16 11:14:57 Q I didn't mean to confine it specifically to

17 11:15:00 South Park though.

18 11:15:01 A Okay.

19 11:15:02 Q If at later stages there were other methods

20 11:15:06 for searching the site for what you thought might be

21 11:15:09 unauthorized conduct -- content, what were those

22 11:15:12 methods?

23 11:15:13 A Yes. We had a -- at one time we had an

24 11:15:19 ability to review videos that were over ten minutes

25 11:15:22 long, and that lasted for a very short period of time.

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2 11:15:30 We were not capable of keeping up with the volume, and
3 11:15:37 at some point, and I don't remember when exactly, that
4 11:15:41 queue, we basically just removed it.

5 11:15:44 Also, I know that on occasion, again, because
6 11:15:53 the sheer volume on the site was, of course, growing
7 11:15:56 very quickly, on occasion we would ask engineering to
8 11:16:00 do queries. Yeah, I mean, again we're talking about a
9 11:16:07 large span of time, so....

10 11:16:13 Q But within that large span of time, were
11 11:16:15 there any other methods, other than the ones that
12 11:16:19 you've named, that you remember that were used to --
13 11:16:22 to scan the site to try and locate unauthorized
14 11:16:25 content?

15 11:16:31 A I mentioned key word searching. I'm not
16 11:17:03 thinking of any other methods. Although, again, I
17 11:17:07 could very well be forgetting something.

18 11:17:08 Q Well, now when you said that at least
19 11:17:12 sometimes engineering would -- would be asked to do
20 11:17:14 queries --

21 11:17:16 A Yes.

22 11:17:16 Q -- what did you -- what did you mean by that?

23 11:17:18 A One of the things that we noticed was content
24 11:17:30 owners definitely were interested in -- in videos that
25 11:17:36 where they had broken up something that was longer

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2 11:17:39 than the ten-minute limit. I should explain that we,
3 11:17:44 at some point, made -- created a ten-minute limit.

4 11:17:50 The -- so the -- they would do things like
5 11:17:54 put part one, part two, part three, and this -- this
6 11:18:00 definitely was something that we suspected could be an
7 11:18:05 indication of something that was unauthorized. Of
8 11:18:09 course, not always, and we would have engineering run
9 11:18:22 inquiries looking for, I think, the word "part" or
10 11:18:28 "part one," or there could have been other terms too.

11 11:18:33 As time went on too, users changed, you know,
12 11:18:39 their trends as well.

13 11:18:40 Q Why did you have engineering run those
14 11:18:42 inquiries as opposed to just doing them yourselves?

15 11:18:45 A Because the volume was massive. There was no
16 11:18:47 way we could in any way tackle that, so we were trying
17 11:18:50 to somehow find a subset that we might be able to
18 11:18:54 help.

19 11:18:59 Q Who was in the engineering department that
20 11:19:02 ran these queries?

21 11:19:06 A Oh, God. Well, of course, Steve was there.
22 11:19:10 Steve Chen was always there.

23 11:19:21 I think this is still pretty early on, and if
24 11:19:24 I'm right about that, you know, I could -- I could
25 11:19:28 list off the engineers that I -- I knew we had early

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2 11:19:31 on, although I don't know if they were directly
3 11:19:33 involved.

4 11:19:34 Q Why don't you just tell me approximately how
5 11:19:36 many there were?

6 11:19:37 A Engineers?

7 11:19:38 Q Uh-huh, involved in this.

8 11:19:39 A Involved.

9 11:19:44 Maybe two.

10 11:19:48 Q And when the engineers ran these queries, I
11 11:19:51 presume they came back with results; is that right?

12 11:19:55 A Yes.

13 11:19:55 Q And then -- and then what would the engineers
14 11:19:57 do with those results?

15 11:19:59 A They would give them to -- it may have been
16 11:20:04 me, it may have been a member on my team.

17 11:20:08 Q And then what -- what would you or your team
18 11:20:11 do with those results then?

19 11:20:14 A We would make an attempt. Although I'm
20 11:20:17 not -- first of all, I don't recall how many times we
21 11:20:20 did this, and I don't recall whether or not we did
22 11:20:24 this. We were able to actually successfully go
23 11:20:31 through these lists.

24 11:20:31 I don't -- I remember the scale of everything
25 11:20:32 was getting so big so fast that a lot of times we

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2 11:20:36 would intend on, you know, going forward with
3 11:20:39 something but, you know, the -- the numbers we're
4 11:20:41 talking about, and I'm talking about beyond copyright,
5 11:20:45 the numbers that we're talking about were big quickly.

6 11:20:48 So I know on at least one occasion we
7 11:20:53 attempted to look through those, and our intent was to
8 11:20:55 try and find unauthorized content to help content
9 11:21:01 owners. That was the bottom line.

10 11:21:03 Q And then on that occasion, do you -- that
11 11:21:07 you're thinking of, is that in reference to specific
12 11:21:10 work or more than one work?

13 11:21:11 A I don't recall a specific work, no.

14 11:21:13 Q And again this occasion, at least this one
15 11:21:16 occasion that you're thinking of, when was that,
16 11:21:18 approximately?

17 11:21:19 A I have no idea.

18 11:21:20 Q And when you -- were you, in fact, successful
19 11:21:30 in finding some things that you believe may have been
20 11:21:32 unauthorized content?

21 11:21:34 A We -- there's no way we could determine that.
22 11:21:37 There was no feedback, and definitely one thing we
23 11:21:40 were successful at was learning that we were not
24 11:21:44 qualified to be making these calls, but as -- as to
25 11:21:49 the success of actually locating unauthorized or

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2 11:23:02 counterclaims. We also became aware of the thousands
3 11:23:07 of mistakes we made for content producers where --
4 11:23:17 where it was original content, but even mainstream
5 11:23:20 media companies. There were -- there were many
6 11:23:26 different points of feedback basically that came our
7 11:23:29 way.

8 11:23:29 Q And you -- you removed thousands of instances
9 11:23:33 of stuff that you believe was unauthorized content?

10 11:23:37 A I can estimate for you, and again it's really
11 11:23:40 guessing. I do not have any record of the numbers. I
12 11:23:46 mean, actually I don't -- I don't -- I don't even know
13 11:23:48 a ballpark in this instance.

14 11:23:50 Q But you believe that you -- that you became
15 11:23:55 aware of thousands of mistakes that you made?

16 11:23:58 A Mistakes, my estimate is definitely
17 11:24:01 thousands. I mean, it's -- it's very likely many,
18 11:24:05 many thousands.

19 11:24:07 Q So then you would have had to remove -- maybe
20 11:24:09 I'm not understanding something, but to have made
21 11:24:12 thousands of mistakes, am I right that you would have
22 11:24:15 had to remove thousands of videos?

23 11:24:17 A Yes, I think that's a fair deduction.

24 11:24:22 Q And how did you become aware of these
25 11:24:28 mistakes? Actually, how were --

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11:24:31 A I just answered that.

11:24:32 Q I'm trying to ask it a little bit different.

11:24:34 I think you answered who told you, but I'm just saying

11:24:37 how, how did they tell you?

11:24:38 A Feedback, newspaper articles, direct e-mails

11:24:44 from content owners, telephone calls, reporters coming

11:24:49 to us on behalf of a content owner that wanted their

11:24:54 video to appear to be pirated and, in fact, it was a

11:24:59 very large media company. They wanted to seed the

11:25:01 site and make it look like it had been something that

11:25:03 was unauthorized.

11:25:08 Q What reporters came to you and said that?

11:25:10 A I do not recall names of -- and it wasn't

11:25:14 directly to me. Let me be very clear. This feedback

11:25:19 came to others as well. I mean, this was feedback

11:25:23 everyone was receiving.

11:25:26 Q Did any reporters come directly to you?

11:25:30 A No, I don't think so.

11:25:35 Q Whether they came directly to you or not, can

11:25:37 you remember the name or maybe the publication that --

11:25:41 that any -- of any reporter that -- that said this?

11:25:44 A That said specifically this, no, absolutely

11:25:46 not. I believe there were multiple instances by the

11:25:58 way. I don't think there was any one publication.

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2 11:26:01 Q Now, but -- but you're testifying that the
3 11:26:05 reporters came to you and said this, or are you saying
4 11:26:08 that you read it in the newspaper, I just want to be
5 11:26:10 clear, or a news publication?

6 11:26:13 A Okay. Let me be clear in that I don't recall
7 11:26:16 exactly how the reporter or the information from a
8 11:26:19 reporter came to us. I don't know. It's my
9 11:26:25 understanding that that took place, the details of
10 11:26:27 which I do not know.

11 11:26:28 Q How did you come to that understanding?

12 11:26:32 A Honestly, I don't recall. Probably talking
13 11:26:39 about it or hearing about it within the company or
14 11:26:42 yeah. I don't truly recall.

15 11:26:48 Q Do you know who at YouTube reporters
16 11:26:52 contacted about this issue?

17 11:26:54 A This issue, no, I do not.

18 11:26:56 Q And I think you said you also had some direct
19 11:27:04 contacts from media companies; is that right?

20 11:27:08 A I had direct contact?

21 11:27:10 Q Yeah.

22 11:27:11 A Yeah, I mean, there was also contact with
23 11:27:13 others, but yes. As it pertained to content that had
24 11:27:19 been -- that had been removed that they, in fact,
25 11:27:23 either through implied authorization or through an

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2 11:27:26 agent or that they were well aware that it was up here

3 11:27:30 even though they didn't upload it themselves --

4 11:27:30 Q Right.

5 11:27:32 A -- they would -- they would contact me, yes,

6 11:27:35 and ask me to have things reinstated.

7 11:27:38 Q And did you, in fact, have them restated at

8 11:27:40 that time?

9 11:27:40 A Yes, I did.

10 11:27:41 Q Who contacted -- what -- what media company

11 11:27:45 do you recall who specifically contacted you on this

12 11:27:47 issue?

13 11:27:48 A I mean almost any media company you could

14 11:27:51 think of we've reinstated content for.

15 11:27:55 Q But specifically on the issue of content that

16 11:28:01 YouTube removed because YouTube believed it may have

17 11:28:03 been unauthorized and then you had a media company

18 11:28:06 contact you and say no, it's one of these thousands of

19 11:28:09 mistakes --

20 11:28:10 A Yeah.

21 11:28:10 Q -- put it back up, can you remember any media

22 11:28:13 companies on that issue?

23 11:28:15 A I can't think of the specifics. I dealt with

24 11:28:26 media companies all the time.

25 11:28:30 Q Can you remember any of these thousands of

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2 11:28:32 mistakes that -- that YouTube removed and were then
3 11:28:37 notified that the content owner actually wanted it up
4 11:28:41 there? Can you name for me any of those?

5 11:28:44 A Any of the mistakes giving specifics? You
6 11:28:48 mean on -- from a media company, or just private party
7 11:28:51 or --

8 11:28:51 Q Any.

9 11:28:52 A I honestly do not recall the specifics. I
10 11:28:55 mean, if I could sit here and think about it for a
11 11:28:59 while, I -- nothing is coming to me at the front of
12 11:29:02 my -- my mind.

13 11:29:03 Q Are there any -- were there any reports
14 11:29:05 prepared within YouTube documenting any of these
15 11:29:10 instances of mistakes?

16 11:29:11 A Again, I want to be very clear that you are
17 11:29:14 talking -- you're asking me about one particular
18 11:29:18 incident where we had, or maybe a couple of incidents,
19 11:29:21 I'm not quite sure how many times it happened, where
20 11:29:26 we had engineering do a query for us. This is what
21 11:29:30 I'm speaking to, and to that, no, I do not recall the
22 11:29:32 specifics.

23 11:29:33 Q So let me -- let me be more clear myself.

24 11:29:35 You testified that you became aware through
25 11:29:38 various means of thousands of instances where YouTube

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11:29:42 had removed material that it believed was unauthorized
11:29:46 and later learned that that removal was done in
11:29:50 mistake -- by mistake because the content owner
11:29:52 actually wanted it up there; is that right?

11:29:55 A That's correct.

11:29:56 Q Okay. Out of those thousands of instances,
11:30:00 can you name for me -- how many of them can you -- can
11:30:05 you name for me with specificity?

11:30:08 A At this stage, I can't name any.

11:30:11 Q Out of --

11:30:12 MR. SHAPIRO: Sorry. Just to be clear, to
11:30:13 make sure, are you talking about the -- the fact that
11:30:22 engineering --

11:30:22 MR. BROWNE: No, we're not.

11:30:23 MR. SHAPIRO: -- or in the universe
11:30:25 generally?

11:30:25 MR. BROWNE: We're talking about the universe
11:30:28 generally.

11:30:28 THE WITNESS: I just said engineering.

11:30:28 MR. SHAPIRO: Okay. It seemed like you guys
11:30:30 might be missing each other.

11:30:30 THE WITNESS: Yeah, I think we're missing
11:30:32 each other.

11:30:32 MR. SHAPIRO: So his question is generally

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11:30:34 can you think of instances of mistakes and takedowns
11:30:39 such as that?

11:30:39 THE WITNESS: Sure.

11:30:40 MR. BROWNE: Q. I want to ask the question,
11:30:41 and I do think it's clear, but in case it wasn't, let
11:30:45 me ask it again.

11:30:46 There are -- you testified, right, that there
11:30:51 were instances where YouTube would go and remove
11:30:53 material because YouTube believed it may have been
11:30:56 unauthorized, and you later learned that you had done
11:31:01 that by mistake thousands of times because the content
11:31:06 owner or someone else contacted you and said the
11:31:09 content owner wanted that material on the site; is
11:31:13 that fair to say you testified?

11:31:15 A That is -- that is fair to say. However,
11:31:19 when I mentioned that, I thought we were speaking
11:31:21 specifically about the engineering queries.

11:31:26 Now, if we're going to speak about that
11:31:29 number "thousands," again, if you want to know more
11:31:35 broadly the response to that beyond the engineering
11:31:38 queries, again, I can -- I -- I -- I can only estimate
11:31:42 the number, first of all. So I'd like to stop using
11:31:45 that number, because now we're speaking more broadly,
11:31:49 and I don't know what the number or even could

GILLETTE

11:31:52 estimate what the number is.

11:31:53 Q Well, if -- if you think we're speaking more
11:31:56 broadly now, would the number be higher?

11:31:59 A Yes.

11:31:59 Q So more, more than many thousands?

11:32:02 A Yes, over the course of -- of -- yeah, over
11:32:06 the course of YouTube.

11:32:08 Q Okay. So out of these more than many
11:32:11 thousands of times that YouTube on its own took down
11:32:15 material --

11:32:16 A Yes.

11:32:16 Q -- and later found out that it was a
11:32:19 mistake --

11:32:19 A Yes.

11:32:20 Q -- I'm going to go back now, in case there
11:32:23 was some confusion -- in that broader group, can you
11:32:26 name for me any reporters who contacted you to say
11:32:30 that this was a mistake?

11:32:34 A The reporters, I cannot, no. I honestly
11:32:37 cannot recall a single name.

11:32:39 Q Okay. And setting aside where they contacted
11:32:41 you or not, can you recall the names of any reporters
11:32:43 who contacted anyone at YouTube --

11:32:46 A No.

GILLETTE

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2 11:32:46 Q -- on this issue?

3 11:32:47 A No.

4 11:32:47 Q Can you recall the name of any publication

5 11:32:50 that any reporter was associated with that contacted

6 11:32:53 YouTube on this issue?

7 11:32:57 A No, but I don't think they would have been in

8 11:33:00 contact with me anyway, right, so....

9 11:33:03 Q But whether they contacted you or not --

10 11:33:07 A Yeah.

11 11:33:07 Q -- do you know whether they contacted

12 11:33:09 YouTube? Did you learn?

13 11:33:10 A I can't definitively say. I wouldn't have

14 11:33:13 been the one there.

15 11:33:14 Q Right.

16 11:33:14 But someone could have told you. That's all

17 11:33:17 I'm saying. You could have learned even though you

18 11:33:19 weren't the one in the room. I'm saying, did you ever

19 11:33:21 come by that knowledge?

20 11:33:23 A I have heard that reporters have contacted us

21 11:33:25 and actually in a couple of instances that was how we

22 11:33:27 became aware of the fact that a particular media

23 11:33:30 company or even a private party had content removed

24 11:33:32 that they actually, whether it be specific

25 11:33:37 authorization or implied authorization, that they

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11:33:42 weren't happy about.

11:33:42 Q And -- and can you remember the names of any
11:33:46 of those reporters?

11:33:48 A No.

11:33:49 Q Okay. Sorry to keep asking. I'm just not
11:33:53 sure sometimes whether we talked about it.

11:33:55 A I really cannot remember the names.

11:33:58 Q Okay. You said you had heard though that
11:34:00 reporters had done this.

11:34:02 A Yes.

11:34:02 Q How had you heard that?

11:34:04 MR. SHAPIRO: Objection; asked and answered.

11:34:05 THE WITNESS: Again, I -- yeah.

11:34:07 MR. BROWNE: Q. Can you answer it again for
11:34:08 me?

11:34:09 A Sure. I -- I don't recall how I heard. I
11:34:13 suspect and can only speculate, since I don't
11:34:16 remember, but it may have just been people talking in
11:34:18 the office.

11:34:21 Q Do you remember any of the people who were
11:34:23 talking?

11:34:23 A No.

11:34:25 Q Okay.

11:34:26 A It's a small team.

GILLETTE

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2 11:58:00 there was a guy, his shadow, literally holding up the
3 11:58:04 video camera in front of the movie the entire time.
4 11:58:09 Again, I can't recall if it -- it was
5 11:58:10 proactive or not. It may have been they themselves
6 11:58:12 that took it down, but it ended up later that we found
7 11:58:15 out that that was, in fact, uploaded intentionally by
8 11:58:18 the creator of the true movie with the intent to make
9 11:58:20 it look like it had been pirated to drive conversation
10 11:58:24 and traffic and excitement around the movie and
11 11:58:26 actually get them into the theater.
12 11:58:29 There were multiple, multiple private
13 11:58:31 parties, maybe not recognizable names, and I don't, in
14 11:58:35 fact, remember the individuals' names, but I can give
15 11:58:38 some examples.
16 11:58:40 American Idol, for example, we did a lot of
17 11:58:43 key word search in there, and we did a lot of
18 11:58:45 proactive removal there in an attempt to create
19 11:58:49 harmony with them and help them with unauthorized
20 11:58:54 content. And American Idol, in particular, a lot of
21 11:58:59 people would make their own homemade show, and they
22 11:59:02 compete with their friends, and they would hold
23 11:59:05 contests, and they videotape it, and they try to put
24 11:59:08 things around it that made it just like the show
25 11:59:10 itself, and there would be voting. The audience, the

1 GILLETTE

12:05:02 2 removed that movie from a -- a website?

12:05:07 3 A Again, I -- I believe -- I believe we did as
12:05:10 4 part of the scanning, yes.

12:05:11 5 Q And did there come a time when you learned
12:05:20 6 that the content owner for that movie actually wanted
12:05:23 7 that material up on its website?

12:05:26 8 A Yes, sorry, I did.

12:05:26 9 Q And how did you -- how did you learn that?

12:05:37 10 A They could have come directly to me. I may
12:05:42 11 have been told from another person within the company,
12:05:48 12 you know. These larger media companies were -- were
12:05:57 13 definitely communicating with many others within
12:05:59 14 our -- within YouTube. So it may have come to me
12:06:02 15 through someone else or directly.

12:06:05 16 Q Excuse me.

12:06:06 17 But is it your understanding that the content
12:06:08 18 owner for this movie we're talking about was a large
12:06:10 19 media company?

12:06:11 20 A That is my recollection, yes.

12:06:12 21 Q But -- but you don't remember which company?

12:06:14 22 A I don't. This -- frequency of these types of
12:06:19 23 incidents were daily.

12:06:21 24 Q Were you proactively scanning -- scanning for
12:06:29 25 potentially unauthorized copyrighted material on a

1 GILLETTE

12:06:32 2 daily basis?

12:06:34 3 MR. SHAPIRO: Objection; time frame.

12:06:36 4 THE WITNESS: Yeah.

12:06:36 5 MR. BROWNE: Q. During any time frame?

12:06:40 6 A Yes. As I stated earlier, we did do

12:06:43 7 proactive scanning at various stages, yes.

12:06:46 8 Q And you did that on a daily basis?

12:06:48 9 A Not necessarily, no. I'm not quite sure.

12:06:52 10 Are you asking me if we did consecutive days?

12:06:56 11 Q I'm just asking you basically if every day,

12:06:59 12 was there any point in time that every day YouTube

12:07:03 13 would proactively scan for potentially unauthorized

12:07:06 14 material on its website?

12:07:09 15 A There were definitely days where people

12:07:12 16 were -- were tasked with that. Whether they were able

12:07:15 17 to get to that or not in that day, that was not always

12:07:19 18 the case, but -- but yes, there -- yes, that -- they

12:07:24 19 were tasked with it.

12:07:25 20 Q And during what time frame were they tasked

12:07:27 21 with that?

12:07:29 22 A I do not recall actually the -- the periods

12:07:31 23 where we did proactive scanning when -- when exactly

12:07:34 24 they were.

12:07:35 25 Q Do you recall when it -- well, did it ever

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2 12:36:44 for things that we suspected might be unauthorized, so
3 12:36:46 that's one reason why I can't agree with that
4 12:36:49 statement, and that's the only reason, actually.

5 12:36:53 Q Do you have an understanding of what was
6 12:36:59 meant in that FAQ by the phrase "obvious copyright
7 12:37:02 violations"?

8 12:37:03 A Yeah, I believe what we were saying there is
9 12:37:05 things that we suspected were unauthorized.

10 12:37:08 Q Okay. You mentioned -- you mentioned earlier
11 12:37:29 this term "Live Site."

12 12:37:33 A Yes.

13 12:37:33 Q What -- so what is that?

14 12:37:35 A So Live Site is our content review team.
15 12:37:40 They respond to videos that have been flagged by the
16 12:37:44 community as being potentially inappropriate under our
17 12:37:48 noncopyright terms of use.

18 12:37:49 Q And -- and forgive me if I -- if I didn't get
19 12:37:52 this the first time, but is Live Site part of the
20 12:37:56 SQUAD?

21 12:37:56 A Yes, it is.

22 12:37:57 Q Okay. And how many people are on the -- are
23 12:37:59 on the Live Site Team?

24 12:38:02 A Right now we have 13 full-time employees, not
25 12:38:14 including -- not including the management, of course,

GILLETTE

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2 12:38:18 with that.

3 12:38:19 Q And I assume that's grown over time; is that

4 12:38:21 right?

5 12:38:21 A It has. It's fluctuated over time. It's

6 12:38:26 gone up and down.

7 12:38:27 Q Right.

8 12:38:27 Well, at the time of the Google acquisition,

9 12:38:31 was there a Live Site Team at that time?

10 12:38:34 A Yes.

11 12:38:34 Q And how many people were on it then?

12 12:38:53 A I -- I'd estimate on this that it was

13 12:39:03 approximately 15 people.

14 12:39:04 Q Okay. And at the time, going back in time

15 12:39:11 once more, but when you joined YouTube, was there a

16 12:39:15 Live Site Team then?

17 12:39:17 A No.

18 12:39:17 Q When did the Live Site Team come into

19 12:39:20 existence?

20 12:39:21 A The Live Site Team, the date, I don't -- I

21 12:39:24 don't know.

22 12:39:27 Q Do you have a rough sense of when it likely

23 12:39:29 was?

24 12:39:29 A Pretty early on after my joining, I -- maybe

25 12:39:40 three, four months, approximately. Maybe less.

GILLETTE

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2 12:39:43 Q Three or four -- approximately three or
3 12:39:45 four months after you joined is your best
4 12:39:46 recollection?

5 12:39:47 A Approximately.

6 12:39:48 Q Okay. And -- and when the Live Site Team was
7 12:39:52 initially formed, how many people did it have?

8 12:39:57 A Yeah, I -- we, of course, brought in people
9 12:40:05 gradually. We -- we had one, and then we had two, and
10 12:40:13 then I think we got up to about five, approximately,
11 12:40:19 at -- at that early stage of development.

12 12:40:27 Q And you mentioned, I think, that the Live
13 12:40:31 Site Team responded to videos that were, quote,
14 12:40:34 "flagged by the community"?

15 12:40:36 A That's correct.

16 12:40:36 Q And what did you mean by that?

17 12:40:38 A Our -- our users can flag a video as it's
18 12:40:42 called on the site if they suspect that it's
19 12:40:43 potentially inappropriate, and so flagging sends
20 12:40:47 something to us. Basically our Live Site Team.

21 12:40:50 Q And can -- can any YouTube user flag a video?

22 12:40:56 A Yes, if they are logged in.

23 12:40:58 Q And what is the process that a user would
24 12:41:04 actually go through to flag a video?

25 12:41:06 A So from the page where you can watch an

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2 12:41:13 individual video, there is a mechanism there in the
3 12:41:17 interface that you can select, and it's a button.
4 12:41:21 It's labeled "Flag as Inappropriate," and from there
5 12:41:25 you can -- you can narrow down your flag through a
6 12:41:29 decision through sort of a tree, and then hit
7 12:41:34 "Submit."

8 12:41:36 Q And then what happens after the user hits
9 12:41:40 "Submit"?

10 12:41:40 A It goes to my team virtually immediately.

11 12:41:44 Q To the Live Site Team?

12 12:41:47 A Correct, and by the way, I just said, "My
13 12:41:49 team," but as of Friday that's not my team anymore.
14 12:41:55 Sorry.

15 12:41:59 Q And then what does the Live Site Team do with
16 12:42:02 that flag that comes in from the user?

17 12:42:04 A They review those videos for terms of use
18 12:42:07 violation, noncopyright terms of use violation.

19 12:42:12 Q Do they review all the videos that are
20 12:42:19 flagged?

21 12:42:19 A Yes.

22 12:42:19 Q Do they review the videos in their entirety?

23 12:42:25 A No --

24 12:42:25 Q Okay.

25 12:42:26 A -- not necessarily.

GILLETTE

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2 12:42:27 Q For what reasons would they not review the
3 12:42:36 entire video?

4 12:42:40 A Volume and the pace at which we have to keep
5 12:42:42 up.

6 12:42:44 Q But they may, in certain instances, review an
7 12:42:47 entire video?

8 12:42:48 A They may have, correct.

9 12:42:49 Q In the instances that they don't review the
10 12:42:51 entire video, what do they do?

11 12:42:53 A They look at thumbnails. We now have up to
12 12:43:02 46 thumbnails that can represent the content in a
13 12:43:05 video. And then there, of course, is information, you
14 12:43:08 know, the user has also entered with regard to the
15 12:43:13 video, like meta tags, and then there's a description.
16 12:43:17 The flag in the information also shows many details
17 12:43:21 basically.

18 12:43:27 Q Can they also -- are they able to hear any
19 12:43:30 audio that's associated with it?

20 12:43:31 A If they choose to, yeah, when they watch it.

21 12:43:34 Q If they're just looking at the thumbnails,
22 12:43:36 can they also hear the audio?

23 12:43:38 A No.

24 12:43:38 Q So if a member of the Live Site Team reviews
25 12:43:47 the video in all or in part, for what purpose are

GILLETTE

12:43:53 they -- they reviewing it?

12:43:55 A To determine if there is, in fact, a
12:43:58 noncopyright terms of use violation, or if it is
12:44:01 something that is not intended for anyone younger than
12:44:05 18 or not appropriate.

12:44:08 Q And what -- what would be examples of the
12:44:11 noncopyright terms of use violations that the Live
12:44:15 Site Team reviews for?

12:44:16 A Sure.

12:44:16 Child pornography, adult pornography, child
12:44:26 abuse, animal abuse, suicides, school shooting
12:44:36 threats, murder, snuff videos. Think of anything
12:44:44 horrible basically, and these are things that we come
12:44:48 across and also police.

12:44:51 Q Are there any members or at any time were
12:44:55 there members of -- sorry -- at any time, were there
12:44:58 employees of YouTube who would review videos and flag
12:45:01 them?

12:45:02 A Employees of YouTube who would review videos
12:45:04 and flag them?

12:45:05 Q As part of their job.

12:45:07 A Review videos and flag them?

12:45:09 Q As opposed to community. That's what I'm
12:45:11 getting at.

GILLETTE

13:03:08 A I don't think so.

13:03:11 Q Why -- why was it not an acceptable way or
13:03:14 would it not be an acceptable way for users to contact
13:03:18 you about copyright violations through a flag?

13:03:22 A I'm -- I'm not a lawyer. So again this is --
13:03:25 my understanding is that a takedown notification needs
13:03:33 to have certain elements in it.

13:03:38 In most cases, it is important that we have
13:03:41 statements like "penalty of perjury," for example,
13:03:44 contact information, for example, such that the other
13:03:48 party could counterclaim, and we could therefore go
13:03:52 through the process of contacting the original
13:03:54 notifier. Various things like that. It's -- it's not
13:03:58 a proper form for a takedown notification.

13:04:04 Q When -- when -- when YouTube would -- the
13:04:19 instances that you proactively scanned for stuff and
13:04:23 took it down, would you sign a statement that you were
13:04:25 doing it under penalty of perjury?

13:04:31 A Ourselves, no.

13:04:32 Q Did you -- did you believe that or did you
13:04:35 have any reason to believe that it was unlawful for
13:04:37 you to take down material on your site for any reason
13:04:42 that you wanted?

13:04:44 A The terms of use states specifically we have

GILLETTE

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2 13:04:46 the right to remove content at our sole discretion for
3 13:04:50 any reason whatsoever.

4 13:04:52 Q Did you -- and you don't have any reason to
5 13:05:06 believe that the terms of use are wrong on that point;
6 13:05:09 do you?

7 13:05:10 A I'm not sure how our terms of use could be
8 13:05:13 wrong. It is what it is.

9 13:05:15 Q Okay. You take stuff down if you think it's
10 13:05:26 child pornography; right?

11 13:05:28 A Oh, absolutely, yes.

12 13:05:30 Q Do you take down stuff that might be a closer
13 13:05:34 call than child pornography that might be offensive to
14 13:05:37 people but maybe not offensive to everyone?

15 13:05:41 A Yes, we do.

16 13:05:42 Q Is there any procedure where the person who
17 13:05:51 put that material on the site can lodge a counterclaim
18 13:05:54 in that instance?

19 13:05:56 A For noncopyright terms, no. We do not have a
20 13:05:59 formal process.

21 13:06:00 Q Do you have an informal process?

22 13:06:04 A We've received e-mails where people have
23 13:06:06 said, hey, I don't understand why you took my video
24 13:06:08 down, and then we do look at that.

25 13:06:12 Q So if you -- if you removed stuff, stuff is

GILLETTE

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2 14:56:57 Q Okay. That number that you see there, that

3 14:57:02 66,782 number, do you know whether all of those videos

4 14:57:08 were removed pursuant to takedown requests?

5 14:57:13 A I believe at this time that we were no longer

6 14:57:16 doing any proactive scanning.

7 14:57:18 Q Okay. Why do you think you -- why is it that

8 14:57:30 you think you stopped the proactive scanning at this

9 14:57:32 point in time?

10 14:57:33 A Because this --

11 14:57:33 MR. SHAPIRO: Object. Objection; asked and

12 14:57:35 answered, unless I'm misunderstanding the question.

13 14:57:38 MR. BROWNE: Q. I'm just saying what about

14 14:57:40 this point in time makes you think that -- that

15 14:57:44 proactive scanning was no longer --

16 14:57:47 A This is post-acquisition.

17 14:57:49 Q Okay. Okay. If you don't mind,

18 14:58:08 Ms. Gillette, can you turn to the page that ends 979.

19 14:58:12 A Yes.

20 14:58:12 Q It says "Best Practices Community Policing."

21 14:58:16 A Yes.

22 14:58:16 Q It shows a picture of a big dog.

23 14:58:18 A That's my dog.

24 14:58:18 Q Oh, really?

25 14:58:19 A (Witness nods head.)

GILLETTE

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2 14:58:20 Q That's great.
3 14:58:22 There's a -- over top of your dog there
4 14:58:25 there's a pull-down menu.
5 14:58:27 A Yes.
6 14:58:27 Q What is that?
7 14:58:28 A This is the interface that one would see when
8 14:58:33 going to the first step of flagging a video for the
9 14:58:36 potentially inappropriate.
10 14:58:37 Q And when you say one would see that, do you
11 14:58:40 mean YouTube users?
12 14:58:41 A Yeah, or me. I mean, if I clicked on it, I'd
13 14:58:45 see it too.
14 14:58:46 Q It's not an internal tool only. It's
15 14:58:49 available for the entire community?
16 14:58:53 A Correct, yes.
17 14:58:53 Q And then over on the right there are some --
18 14:58:56 some statistics about flagging videos; do you see
19 14:58:58 that?
20 14:58:59 A Yes.
21 14:58:59 Q And you see it says "75% of all flagged
22 14:59:01 videos are reviewed within three minutes"?
23 14:59:03 A Yes.
24 14:59:03 Q How did you know that information?
25 14:59:07 A Again, this is also information that I

GILLETTE

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2 14:59:12 tracked weekly. In fact, this -- this statistic from
3 14:59:16 the Bizi tool.

4 14:59:19 Q And right above it it says "19,000 videos
5 14:59:24 flagged per day." Again, how did you come by that
6 14:59:27 information?

7 14:59:27 A Same tool.

8 14:59:28 Q Okay. And then -- and then it says
9 14:59:42 "Pornography is typically flagged and removed within
10 14:59:44 the first 100 views."

11 14:59:47 Same question really. How did you know that?

12 14:59:50 A That was not available in Bizi. I don't --
13 14:59:55 it was a one-off report that I had asked for.

14 14:59:58 Q Who did you ask for it from?

15 15:00:02 A I don't remember.

16 15:00:02 Q Were you confident that that report was
17 15:00:06 accurate?

18 15:00:07 A Yes.

19 15:00:07 Q If you could turn the page to -- to the page
20 15:00:16 that says -- the next page, the heading is "What
21 15:00:20 Happens to Reviewed Content"; do you see that?

22 15:00:23 A I do.

23 15:00:23 Q There's a bullet there that says "Approve,
24 15:00:28 restrict, reject or reject with strike"; do you see
25 15:00:31 that?

GILLETTE

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2 15:00:31 A Yes, I do.

3 15:00:32 Q What's that referring to?

4 15:00:34 A Those are the actions we can take on a video

5 15:00:39 once it's been flagged and reviewed.

6 15:00:40 Q And -- and by "you," you mean the Live Site

7 15:00:45 Team?

8 15:00:45 A Correct.

9 15:00:45 Q If -- if you select the -- if the Live Site

10 15:00:50 Team takes the approved action, what does that mean?

11 15:00:51 A It means that we did not find a terms of use

12 15:00:54 violation.

13 15:00:55 Q And the video would remain up on the site?

14 15:00:57 A That's correct.

15 15:00:58 Q Okay. If the -- if the Live Site Team takes

16 15:01:01 the restrict action, what -- what does that mean?

17 15:01:03 A That means that the video will then only be

18 15:01:06 available for viewers that are 18 or older.

19 15:01:11 Q And why -- what are some of the reasons why

20 15:01:13 the Live Site Team would take that restrict action?

21 15:01:18 A We had deemed -- we created policies for

22 15:01:24 content that we deemed not appropriate for all ages,

23 15:01:28 so it would be something that fell into that policy.

24 15:01:31 Q Were those policies available to the YouTube

25 15:01:33 users or were they internal?

GILLETTE

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2 15:04:04 potentially, predators. And because the video was not
3 15:04:10 uploaded to violator terms of use, there was nothing
4 15:04:14 wrong with it, because it was innocently posted, we
5 15:04:17 would remove it, but we didn't need to try to train
6 15:04:20 the users to change their behavior. The strikes were
7 15:04:25 to train behavior.

8 15:04:27 Q Was it possible on the YouTube site for users
9 15:04:39 to mark videos as private?

10 15:04:42 A The users, yes.

11 15:04:44 Q And what would happen if the user did that?

12 15:04:47 A Their video, once uploaded, would be not
13 15:04:50 available to the general public.

14 15:04:53 Q And if -- if another user, a member of the
15 15:04:59 general public, used the searched feature on the
16 15:05:03 YouTube page, could they find that private video?

17 15:05:08 A No.

18 15:05:08 Q Was there any way that a member of the
19 15:05:10 general public could locate private videos on the
20 15:05:15 YouTube site?

21 15:05:18 A I don't think so.

22 15:05:18 Q When -- during the times that you were
23 15:05:24 conducting proactive scans, would YouTube do proactive
24 15:05:30 scans of the -- the private site videos?

25 15:05:31 A Yes.

GILLETTE

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2 17:35:49 Q So did you have a review queue for videos

3 17:35:54 close to the ten-minute limit at some point?

4 17:35:56 A No.

5 17:35:56 Q Then why did you use the word

6 17:36:03 "removed" instead of --

7 17:36:04 A I didn't clarify in this e-mail, but the

8 17:36:07 queue that existed was videos ten minutes or over. It

9 17:36:11 was not videos that were close to the ten minutes.

10 17:36:14 That's why it was called "length too long."

11 17:36:18 Q Thank you.

12 17:36:19 In the sentence I just read, you gave two

13 17:36:29 reasons for not continuing with the "length too long"

14 17:36:37 queue. The first was there wasn't enough time to

15 17:36:39 review them all, which we've talked about, and the

16 17:36:43 second has to do with director accounts. Could you

17 17:36:46 talk about that for a bit?

18 17:36:48 A Yes. Director accounts had the ability to

19 17:36:58 upload videos longer than ten minutes.

20 17:37:12 Q Was there any mechanism you could have used

21 17:37:14 to exclude uploads from director accounts from this

22 17:37:18 kind of a filter?

23 17:37:24 MR. SHAPIRO: Objection; calls for

24 17:37:25 speculation; vague.

25 17:37:26 THE WITNESS: I still answer?

1

GILLETTE

2

17:37:28 MR. SHAPIRO: Yes.

3

17:37:28 THE WITNESS: Actually, I'm not aware of

4

17:37:35 possible technical mechanisms.

5

17:37:37 MR. COX: Q. Besides those two reasons, were

6

17:37:41 there any other reasons why you thought that the

7

17:37:48 "length too long" queue was removed?

8

17:37:51 A Aside from these two reasons?

9

17:37:54 Q Yes.

10

17:38:07 A I do recall the -- the queue was building up

11

17:38:14 also, because we weren't able to keep up with it, and

12

17:38:17 I recall that it was creating -- it was making the

13

17:38:21 entire tool extremely slow for the other areas that we

14

17:38:24 needed.

15

17:38:31 Q Turning away from the "length too long" queue

16

17:38:34 as it existed and to the "just under ten minutes"

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17:38:39 queue that Mr. Donahue suggested, did you ever

18

17:38:43 implement a queue like what Mr. Donahue suggested?

19

17:38:48 A No.

20

17:38:48 Q Did you ever talk about whether or not to

21

17:38:52 implement something like that?

22

17:38:53 MR. SHAPIRO: Objection; asked and answered.

23

17:38:58 MR. COX: Q. Could you indulge me and answer

24

17:39:01 it again?

25

17:39:02 A No, I did not.